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October 9, 2020

VIA ECF

Honorable Sarah Netburn  
U.S. Magistrate Judge  
Thurgood Marshall Courthouse  
40 Foley Square, Room 430  
New York, NY 10007

**Re: Phillies v. Harrison/Erickson, Inc. et al., No. 19-cv-7239-VM-SN**

Dear Judge Netburn:

We represent the Defendants and Counterclaim Plaintiffs (“H/E”) and write in connection with your Order, dated October 8, 2020 (ECF No. 111, “Conference Order”) granting our letter request on behalf of H/E to set a scheduling conference (ECF No. 110, “H/E’s Conference Request”) in light of Judge Marrero’s endorsed Order, dated October 5, 2020, (ECF No. 108) (“Referral Order”). The Referral Order referred to Your Honor the “resolution” of H/E’s intended motion for leave to amend the Answer and Counterclaim, “as well as the supervision of remaining pre-trial proceedings, establishing case management schedules as necessary, and settlement.” *Id.*

The purpose of this letter is to address that part of your Conference Order that directed the parties to file a pre-conference letter by Tuesday, October 13, 2020 (“Pre-Conference Letter”), addressing the issues raised in H/E’s Conference Request, in advance of the telephone conference scheduled for October 16, 2020 (“Conference”).

As discussed below, except for a discovery issue involving contention interrogatories, the remaining scheduling issues raised in H/E’s Conference Request relate to issues raised in prior letters to Judge Marrero which are already filed with the Court. This prior correspondence will be attached and made a part of our Pre-Conference Letter, and we ask the Court to consider these prior submissions to avoid unnecessarily duplicating the same arguments and presentations in the body of the Pre-Conference Letter. Here are the scheduling issues raised in relation to these prior filings.

1. **The Court’s Letter to the Copyright Office.** The parties have already submitted and filed letters to the Court addressing the suggested form, content, and timing of the necessary letter to be sent by the Court to the Copyright Office. We will attach these previous letters to H/E’s Pre-Conference Letter. The purpose of H/E’s Conference Request was to address the appropriate date for submitting this necessary letter.



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2. **The Parties Intended Summary Judgment Motions.** All parties have submitted substantial pre-motion letters to Judge Marrero relating to their respective intended motions for summary judgment. These letters will be attached to H/E's Pre-Conference Letter. Judge Marrero's Referral Order did not refer resolution of summary judgment motions to Your Honor for determination, and H/E intends to brief fully these important issues. The purpose of H/E's Conference Request was simply to set a briefing schedule for these important motions.
3. **H/E's Intended Motion for Leave to Amend Their Counterclaims.** The Referral Order referred to Your Honor for "resolution" H/E's intended motion for leave to amend their counterclaim based on post-termination infringement by The Phillies. There have been extensive e-filed pre-motion letters addressing the issues relating to this intended motion. H/E intends to brief fully this motion. The purpose of H/E's Conference Request was to set a briefing schedule for this motion.<sup>1</sup>
4. **Discovery Disputes.** Counsel for both sides are currently discussing issues relating to the opposing side's answers to contention interrogatories and we will address this issue in H/E's Pre-Conference Letter.

We therefore request that the issues and arguments previously addressed in filed letters to the Court that H/E intends to attach to H/E's Pre-Conference Letter, need not be restated or summarized in the body of the Pre-Conference Letter.

Respectfully submitted,

/s/ Paul D. Montclare

Paul D. Montclare  
Partner

PDM/mcp

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<sup>1</sup> These submissions also necessarily had to address very briefly the unfounded wild *ad hominem* attacks on our clients Bonnie Erickson and Wayde Harrison, the authors and creators of the Phanatic.